

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

ROBERT CAMPBELL §
v. § CIVIL ACTION NO. 5:05cv62
BOWIE COUNTY, TEXAS, ET AL. §

MEMORANDUM ADOPTING INITIAL REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

The Plaintiff Robert Campbell filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Campbell sued Bowie County, Texas, and District Attorney Bobby Lockhart in his original complaint. He asserted that he had been falsely imprisoned and is now in jail on pending charges which are not being resolved. Campbell also alluded to a claim of improper medical care.

The Magistrate Judge directed Campbell to file an amended complaint, which he did on April 28, 2005. This amended complaint added two Defendants, an unknown deputy and a nurse named Roger Wise. Campbell reiterated that he is being held on false charges in the jail and provided additional details regarding the denial of medical care. He also said that he was held for 14 months in jail on charges which were later dismissed.

On May 23, 2005, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed in part. The Magistrate Judge concluded that Campbell's claims regarding his present incarceration were premature under the doctrine of Heck v. Humphrey, 114 S.Ct. 2364, because his claims implicate the validity of his incarceration. The Magistrate Judge additionally

stated that Campbell's claims against the District Attorney, including his claim about the prior incarceration, were barred by prosecutorial immunity and that his claim against Bowie County lacked merit because he failed to show the requisites for municipal liability. Finally, the Magistrate Judge determined that Campbell's claim regarding the medical care in the jail stated a potential claim and recommended that he be allowed to proceed on this claim.

Campbell filed objections to this Report on June 3, 2005. In his objections, Campbell again complains that he was held for 14 months and then the charges were dismissed, but does not address the Magistrate Judge's conclusion that his claim against D.A. Bobby Lockhart is barred by prosecutorial immunity. He complains about his current confinement and says that all requirements of exhaustion have been met "since this was Bowie County issues," but does not otherwise address the Magistrate Judge's determination that his claims are premature under Heck. Nor does Campbell indicate that his present confinement has been set aside or declared invalid as specified in Heck. Finally, Campbell does not address the Magistrate Judge's conclusion regarding the liability of Bowie County.

The Court has conducted a careful *de novo* review of the pleadings and documents in this cause, including the Report of the Magistrate Judge and the Plaintiff's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's claims regarding his present incarceration be and hereby are DISMISSED as premature without prejudice as to the refiling of these claims at such time as Campbell can show a violation of his constitutional rights and that the incarceration has been ended by his release without charges or that any conviction on these charges reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such

determination, or called into question by a federal court's issuance of a writ of habeas corpus under 28 U.S.C. §2254. It is further

ORDERED that the Plaintiff's claims against District Attorney Bobby Lockhart and Bowie County be and hereby are DISMISSED with prejudice as frivolous, and that Lockhart, Bowie County, and the unnamed sheriff's deputy are hereby dismissed as parties to this lawsuit. Finally, it is

ORDERED that the dismissal of these claims and parties should have no effect upon Campbell's claims against Nurse Roger Wise, and that the dismissal of these claims and parties shall not count as a strike for purposes of 28 U.S.C. §1915(g).

SIGNED this 10th day of June, 2005.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE